

FLOWERS & O'BRIEN, LLC  
By: Kerry B. Flowers, Esq. (220521138)  
70 Hudson Street  
Suite 4A  
Hoboken, NJ 07030  
Phone: (201) 488-1644  
[kflowers@fnolaw.com](mailto:kflowers@fnolaw.com)  
Attorneys for Defendants, MYK Builders, LLC, LLC; Yousuf Khan,  
Aqeel Khan

UNITED STATES DISTRICT  
COURT DISTRICT OF NEW  
JERSEY TRENTON VICINAGE

JEFFREY W. KUSMICK,  
Plaintiff

v.

NAJI ABISLEIMAN; THE ESTATE  
OF DAVID NAIM ABISLEIMAN;  
NADIA ABISLEIMAN AS EXECUTRIX  
OF THE ESTATE OF DAVID NAIM  
ABISLEIMAN; NADIA ABISLEIMAN,  
Individually; REA LLC; MYK  
BUILDERS, LLC, LLC; YOUSUF  
KHAN, Individually; AQEEL  
KHAN, Individually; GRO  
ARCHITECTS, PLLC; RICHARD  
GARBER, Individually; NICOLE  
ROBERTSON, Individually; CITY  
OF NEW BRUNSWICK; DANIEL  
DOMINGUEZ, individually; ZEE  
ENGINEERING, LLC; ZULFIQARA  
CHOWDRY, Individually;  
CONSULTING ENGINEERS, 1-10;  
JOHN AND JANE DOES 1-10;  
Jointly and Severally,

Defendants.

CASE NO. 3:23-cv-02219-  
GC-RLS

DECLARATION OF KERRY  
BRIAN FLOWERS, ESQ. IN  
SUPPORT OF DEFENDANTS  
YOUSSUF KHAN, AQEEL KHAN  
AND MYK BUILDERS, LLC  
MOTION TO SET ASIDE ENTRY  
OF DEFAULT AND TO EXTEND  
TIME TO ANSWER

I, Kerry Brian Flowers, Esq. pursuant to 28 U.S.C. 1746, declare  
as follows:

1. I am over 18 years of age and attorney-at-law licensed in the

State of New Jersey.

2. I am admitted to practice in the United States District Court for the District of New Jersey.
3. I am a partner in the law firm of Flowers & O'Brien, LLC (the "Firm"), counsel to defendants Yousuf Khan, Aqeel Khan, and MYK Builders, LLC in the captioned matter (the "Khan Defendants"). As such I have personal knowledge of the facts set forth herein.
4. I make this Declaration in support of the Khan Defendants' Motion to Set Aside Entry of Default and Extend Time to Answer.
5. The Complaint in this case was filed on April 20, 2023 via the Court's CM/ECF system.
6. The Khan Defendants were served by mail with the Complaint and ancillary documents on or about June 1, 2023.
7. While styled as a copyright infringement case, the allegations in the 137 paragraph, eight count, and 39-page complaint center around the non-payment of certain professional fees allegedly due to the Plaintiff from defendants other than the Khan Defendants.
8. The allegations against the Khan Defendants are limited to (i) contributory copyright infringement, (ii) vicarious copyright infringement, and (iii) tortious interference with contract and prospective economic advantage.

9. On or about July 11, 2023, the Khan Defendants contacted the Firm seeking representation on the captioned matter.

10. Upon reviewing the Docket on PACER, I learned that counsel to co-defendants were engaged in settlement discussions with Plaintiff and that Plaintiff had consented to extensions of time to file an answer due to the ongoing settlement discussions.

11. Based upon discussions with counsel to the other Defendants, settlement discussions are ongoing.

12. In mid-August, it appeared that the settlement discussion would not be concluded in the near future, and our firm discussed preparing an answer and appearing in the matter with the Khan Defendants.

13. On August 21, 2023, the Firm experienced a cyber-attack that compromised and interfered with the Firm's business and ability to produce work.

14. At the same time, the attorney tasked with preparing the Answer lost her father.

15. On August 24, 2023, I learned that the Clerk had entered a default against the Khan Defendants for failure to plead or otherwise defend, pursuant to Fed. R. Civ. P. 55(a).

16. I contacted the Plaintiff by telephone and requested that he consent to vacate the entry of default; the Plaintiff declined.

17. Attached as Exhibit A is the proposed Answer that the Khan Defendants will file if the Court grants their request to vacate the entry of default.

18. The Rule 16 Conference has been set for September 28, 2023. The Firm will be prepared to attend and participate.

19. No discovery has been undertaken by the parties at this point.

20. The Khan Defendants can set forth meritorious defenses to the allegations in the multi-count Complaint.

21. Without limiting the rights of the Khan Defendants to raise any other defenses, the following are meritorious defenses to the Complaint:

A. Any damages incurred by the Plaintiff are the result of his own actions or contributory negligence; and

B. Pursuant to 17 U.S.C. § 107, and considering the relevant factors, any use of Plaintiff's asserted copyrighted works by or through Khan Defendants' services constitutes fair use; and

C. Khan Defendants were not aware, and had no reason to believe, that their alleged acts constituted an infringement of a copyright, and accordingly, any statutory damages should be reduced pursuant to 17 U.S.C. § 504(c)(2).

D. Any copying by Khan Defendants of any protectable

expression is *de minimis* as compared to the copyrighted works as a whole, and all legal and equitable relief Plaintiff seeks is barred on that basis; and E. Kahn Defendants' conduct was innocent, non-infringing, and was not a willful infringement of the copyright if it exists.

22. Pursuant to Fed. R. Civ. P. 55(c) the Kahn Defendants request that the Court set aside the Default entered on August 24, 2023, and permit the Khan Defendants to file an Answer out of time.

23. A copy of the Khan Defendants' proposed Answer is attached as Exhibit "A."

I declare under penalty of perjury that the foregoing is true and correct.

/s/Kerry B. Flowers  
Kerry Brian Flowers

Dated: September 20, 2023

**EXHIBIT A**

FLOWERS & O'BRIEN, LLC

By: Kerry B. Flowers, Esq. - I.D. #1138 Ten Melrose Avenue

70 Hudson Street

Suite 4A

Hoboken, NJ 07030

Phone: (201) 488-1644

[kflowers@fnolaw.com](mailto:kflowers@fnolaw.com)

*Attorneys for Defendants, MYK Builders, LLC, LLC; Yousuf Khan, Aqeel Khan*

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY  
TRENTON VICINAGE**

JEFFREY W. KUSMICK,

Plaintiff

v.

NAJI ABISLEIMAN; THE ESTATE OF DAVID NAIM ABISLEIMAN; NADIA ABISLEIMAN AS EXECUTRIX OF THE ESTATE OF DAVID NAIM ABISLEIMAN; NADIA ABISLEIMAN, Individually; REA LLC; MYK BUILDERS, LLC, LLC; YOUSUF KHAN, Individually; AQEEL KHAN, Individually; GRO ARCHITECTS, PLLC; RICHARD GARBER, Individually; NICOLE ROBERTSON, Individually; CITY OF NEW BRUNSWICK; DANIEL DOMINGUEZ, Individually; ZEE ENGINEERING, LLC; ZULFIQARA CHOWDRY, Individually; CONSULTING ENGINEERS, 1-10; JOHN AND JANE DOES 1-10; Jointly and Severally,

Defendants.

CASE NO. 3:23-cv-02219-GC-RLS

**MYK BUILDERS, LLC,  
LLC YOUSUF KHAN AND  
AQEEL KHAN ANSWER  
AND AFFIRMATIVE  
DEFENSES**

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

Defendants MYK Builders, LLC, LLC, Aqeel Khan and Yousuf Khan (collectively, "MYK" and/or "Khan Defendants"), through its attorneys, Flowers & O'Brien, LLC, by way of answer to the Complaint aver as follows:

**COMPLAINT**

**(Copyright Infringement – Injunctive Relief Demanded)**

1. Khan Defendants admit that Plaintiff has filed such a Complaint but deny any liability for the causes of action pleaded against Khan Defendants.

**PARTIES**

2. Admitted.

3. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph; hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

4. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph; hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

5. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph; hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

6. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

7. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

8. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

9. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

10. Admitted.

11. Admitted.

12. Admitted that the City of New Brunswick is a governmental entity with the stated business address, but Khan Defendants are without sufficient information or knowledge to admit or deny the other allegations in this paragraph. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

13. Admitted that defendant Daniel Dominguez is the City's Director of Planning and Economic Development, but Khan Defendants are without sufficient information or knowledge to admit or deny the other allegations in this paragraph. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

14. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

15. Khan Defendants are without sufficient information or knowledge to admit

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at time of trial.

16. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

17. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

#### JURISDICTION AND VENUE

18. Khan Defendants admit that this Court has jurisdiction over the action based upon alleged copyright infringement. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

19. Khan Defendants admit that this Court has jurisdiction over the action based upon alleged copyright infringement. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

20. Denied as to Khan Defendants.

21. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

#### GENERAL ALLEGATIONS

22. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

23. Khan Defendants are without sufficient information or knowledge to admit

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at time of trial.

24. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

25. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

26. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

27. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

28. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph, hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

29. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

30. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

31. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

32. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

33. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

34. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

35. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

36. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

37. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

38. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

the time of trial.

39. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

40. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

41. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

42. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

43. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

44. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

45. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

46. Khan Defendants are without sufficient information or knowledge to admit

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

47. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

48. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

49. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

50. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

51. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph, hence, Plaintiff is left to his proofs, if relevant, at time of trial.

52. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

53. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

54. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

55. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

56. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

57. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

58. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

59. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

60. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

61. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

the time of trial.

62. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

63. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

**COUNT I**

**(Copyright Infringement)**

64. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

65. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

66. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

67. Khan Defendants neither admit nor deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

68. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

69. Khan Defendants neither admit nor deny the allegations in this paragraph, as

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

70. Khan Defendants neither admit nor deny the allegations in this paragraph, as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

71. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

72. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

73. Denied.

74. Denied.

75. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

76. Denied that Khan Defendants violated any of Plaintiff's asserted rights, including but not limited to infringement.

77. Khan Defendants neither admit nor deny the allegations in this paragraph.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

78. Denied as to Khan Defendants.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT II**

**(Contributory Infringement)**

79. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

80. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

81. Khan Defendants neither admit nor deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

82. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

83. Denied that Khan Defendants violated any of Plaintiff's asserted rights, including but not limited to any infringement.

84. Denied that Khan Defendants violated any of Plaintiff's asserted rights,

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

including but not limited to any infringement.

85. Khan Defendants neither admit nor deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT III**

**(Vicarious Infringement)**

86. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

87. Khan Defendants neither admit nor deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

88. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

89. Denied that Khan Defendants violated any of Plaintiff's asserted rights, including but not limited to any infringement.

90. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

91. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, including any allegation of infringing activity, those allegations are denied.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT IV**

**(Breach of Contract)**

92. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

93. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

94. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

95. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

96. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

97. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

98. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

99. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT IV**

**(Book Account)**

100. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

101. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

102. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

103. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

the time of trial.

104. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

105. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT V**

**(Quantum Meruit)**

106. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

107. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph, Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

108. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

109. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

110. Khan Defendants are without sufficient information or knowledge to admit

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

111. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

112. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT VI**

**(Quantum Valebant)**

113. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

114. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

115. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

116. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

117. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at time of trial.

118. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT VII**

**(Breach of Covenants of Good Faith and Fair Dealing)**

119. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

120. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

121. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

**WHEREFORE**, Khan Defendants, MYK Builders, LLC, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**COUNT VIII**

**(Tortious Interference with Contract and Prospective Economic Advantage)**

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

122. Khan Defendants repeat their responses to the prior paragraphs as if set forth fully at length herein.

123. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

124. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

125. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

126. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

127. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

128. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

129. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

the time of trial.

130. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

131. Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

132. . Khan Defendants are without sufficient information or knowledge to admit or deny the allegations in this paragraph. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial.

133. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

134. It is admitted that Khan Defendants were made aware that Plaintiff was the prior architect for the project, but it is denied that Khan Defendants violated any of Plaintiff's asserted rights, including but not limited to any infringement.

135. Khan Defendants neither admit nor deny the allegations in this paragraph as they are directed at other defendants. Hence, Plaintiff is left to his proofs, if relevant, at the time of trial. To the extent any fault is alleged against Khan Defendants, those allegations are denied.

136. Denied.

137. Denied.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

**WHEREFORE**, Khan Defendants, MYK Builders, Aqeel Khan, and Yousuf Khan, demand judgment in its favor dismissing the Complaint, costs of suit and reasonable attorneys' fees, and such further relief as the Court deems proper.

**AFFIRMATIVE DEFENSES**

**FIRST SEPARATE DEFENSE**

Khan Defendants are not liable for breach of contract and/or negligence.

**SECOND SEPARATE DEFENSE**

Khan Defendants performed every duty owed to Plaintiff, if any, or to any other persons/entities.

**THIRD SEPARATE DEFENSE**

The incident was caused solely by the acts or omissions of some other person or party over whom Khan Defendants had no control or right of control.

**FOURTH SEPARATE DEFENSE**

Pursuant to 17 U.S.C. § 107, and considering the relevant factors, any use of Plaintiff's asserted copyrighted works by or through Khan Defendants' services constitutes fair use.

**FIFTH SEPARATE DEFENSE**

The Plaintiff is liable for negligence, which contributed to the alleged damage, and, therefore, barred from recovery or subject to having the same diminished in accordance with New Jersey law.

**SIXTH SEPARATE DEFENSE**

Khan Defendants were not aware, and had no reason to believe, that its alleged acts constituted an infringement of a copyright, and accordingly, any statutory damages should be reduced pursuant to 17 U.S.C. § 504(c)(2).

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

**SEVENTH SEPARATE DEFENSE**

Any copying by Khan Defendants of any protectable expression is *de minimis* as compared to the copyrighted works as a whole, and all legal and equitable relief Plaintiff seeks is barred on that basis.

**EIGHTH SEPARATE DEFENSE**

The legal and equitable relief Plaintiff seeks as to part or all of the relevant period is nevertheless barred under the implied license doctrine.

**NINTH SEPARATE DEFENSE**

Plaintiff fails to state a claim against Khan Defendants on which relief can be granted, including but not limited to pursuant to N.J.S.A. 2A:53A-27, et seq.

**TENTH SEPARATE DEFENSE**

Khan Defendants deny Plaintiff is entitled to any monetary damages.

**ELEVENTH SEPARATE DEFENSE**

The applicable statute of limitations bars the plaintiff's claims.

**TWELFTH SEPARATE DEFENSE**

Khan Defendants deny Plaintiff is entitled to any relief against Khan Defendants, including any request for a preliminary injunction as set forth in Count I of the Complaint.

**THIRTEENTH SEPARATE DEFENSE**

Plaintiff's claims are barred by the doctrine of accord and satisfaction.

**FOURTEENTH SEPARATE DEFENSE**

Plaintiff's claims for relief are barred by the "Fair Use Doctrine" pursuant to Section 107 of the Copyright Act, 17 U.S.C. §107.

**FIFTEENTH SEPARATE DEFENSE**

Plaintiff's claims are barred by the doctrine of estoppel.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

**SIXTEENTH SEPARATE DEFENSE**

Plaintiff's claims are barred by the doctrines of settlement, waiver and/or release.

**SEVENTEENTH SEPARATE DEFENSE**

Plaintiff's claims are barred because Plaintiff failed to mitigate damages.

**EIGHTEENTH SEPARATE DEFENSE**

The Court lacks subject matter and/or diversity jurisdiction.

**NINETEENTH SEPARATE DEFENSE**

The doctrines of laches bar the plaintiff's claims.

**TWENTIETH SEPARATE DEFENSE**

Plaintiff's claims are barred by its own actions in breaching the parties' contract.

**TWENTY-FIRST SEPARATE DEFENSE**

Any alleged infringement is barred by the statutes of limitations as set forth in section 507 of the Copyright Act, 17 U.S.C. §507.

**TWENTY-SECOND SEPARATE DEFENSE**

Plaintiff's claims are barred by Plaintiff's own breaches of contract, actions, and/or inactions, which are the proximate cause of the Plaintiff's alleged damages.

**TWENTY-THIRD SEPARATE DEFENSE**

Answering Defendants' conduct was innocent, non-infringing, and was not a willful infringement of copyright.

**TWENTY-FOURTH SEPARATE DEFENSE**

Plaintiff has filed to join and/or name all necessary and indispensable parties.

**TWENTY-FIFTH SEPARATE DEFENSE**

Plaintiff's claims are barred by laches.

**TWENTY-SIXTH SEPARATE DEFENSE**

Plaintiff's claims are barred by failure of consideration.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

**TWENTY-SEVENTH SEPARATE DEFENSE**

Plaintiff's claims are barred since critical parts or portions of his alleged protected copyrights are invalid due to consisting of un-protectable idea(s) or processes.

**TWENTY-EIGHTH SEPARATE DEFENSE**

Plaintiff's claims are barred by its breach of the duty of good faith and fair dealing.

**TWENTY-NINTH SEPARATE DEFENSE**

Plaintiff's claims are barred since critical part or portions of his alleged protected copyrights are invalid due to consisting of fact(s).

**THIRTIETH SEPARATE DEFENSE**

Plaintiff has failed to state a claim for vicarious copyright liability

**THIRTY-FIRST SEPARATE DEFENSE**

Plaintiff has failed to state a claim for tortious interference with contract

**THIRTY-SECOND SEPARATE DEFENSE**

Plaintiff has failed to state sufficient facts to support the piercing of MYK Builders' corporate veil.

**CROSSCLAIM FOR CONTRIBUTION**

Khan Defendants deny liability to Plaintiff. However, if these defendants are judged liable, then Khan Defendants demand contribution from co-defendants pursuant to the applicable Joint Tortfeasors Contribution Act, N.J.S.A. 2A:53A-1 through 5.

**CROSSCLAIM FOR INDEMNIFICATION**

Khan Defendants deny liability to plaintiff. However, if these defendants are judged liable, Khan Defendants demands common law and contractual indemnification from co-defendants.

Kusmick v. Absileiman, et al

Docket No. 3:23-CV-02219

Answer of Defendants MYK Builders, KKC, Aqeel Khan and Yousuf Khan

**ANSWER TO ALL CROSSCLAIMS**

Khan Defendants deny all crossclaims filed, or to be filed, against it in this action.

**DEMAND FOR JURY TRIAL**

Khan Defendants hereby demand trial by jury as to all issues herein.

**DEMAND FOR STATEMENT OF DAMAGES**

PLEASE TAKE NOTICE that pursuant to the application of the Federal Rule of Civil Procedure 26, the Khan Defendants require that Plaintiff, within five days, furnish them with a computation of each category of damages claimed.

FLOWERS & O'BRIEN, LLC  
*Attorneys for Defendants,*  
*MYK Builders, LLC, LLC, Aqeel Khan and*  
*Yousuf Khan*  
By: /s/Kerry B. Flowers  
Dated: September 1, 2023